

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:6:POSTF-144274-02

BKMeneely

date: SEP 06 2002

to: Taxpayer Advocate Service, Oklahoma City
MS 1005 OKC

from: Associate Area Counsel (SB/SE)

subject: **Taxpayer:** [REDACTED], **Deceased**
SSN: [REDACTED]

This memorandum responds to your request for assistance dated August 13, 2002. This memorandum should not be cited as precedent.

ISSUES

1. Whether the decedent qualifies as a "specified terrorist victim" within the meaning of I.R.C. § 692(d)(4)(A).

2. Whether the decedent must be at the actual site of the attack to qualify as a "specified terrorist victim" within the meaning of section 692(d)(4)(A).

CONCLUSION

We do not believe that the decedent qualifies as a "specified terrorist victim" within the meaning of section 692(d)(4)(A). "Specified terrorist victim" means any "decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995..." The phrase "wound or injury" suggests a bodily injury where the skin is not broken, but does not suggest that mental injuries are included, such as a heart attack or stroke brought on by emotional shock. Even if mental injuries are included, there is insufficient evidence in this case that the decedent died as a result of an injury, i.e. a stroke, incurred as a result of the Oklahoma City bombing.

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Section 692(d)(4) also requires that the wounds or injury be "incurred as a result of the terrorist attacks." We believe that this statutory phrase requires that the victim be within the zone of destruction or an area directly impacted by the terrorist attack. A victim could qualify for relief if the wound or injury was incurred in a building or area adjacent to the site of the attack.

FACTS

A KITA claim was filed on behalf of [REDACTED] by his surviving spouse, [REDACTED]. The decedent, was living at the [REDACTED] on April 19, 1995, the date of the attack on the Alfred P. Murrah Federal Building in Oklahoma City. The [REDACTED]

[REDACTED]

The claimant contends that [REDACTED] suffered a stroke, with paralysis and loss of speech, as a result of the bombing attack. [REDACTED]

[REDACTED]

The Service disallowed the claim on [REDACTED]. The disallowance letter states:

This is your legal notice that we have disallowed your claim for the period shown above because the decedent was not present at the site of the attack on April 19, 1995, and was not wounded or injured as a direct result of the attack.

The claimant has requested the assistance of Congressman [REDACTED] to resolve the claim.

DISCUSSION

I.R.C. § 692(d)(1) generally provides that any income tax for the year of the victim's death and the year, or years, between the date of death and the year of the wounds, illness or injury were incurred are to be abated if assessed, and not imposed if not assessed. Section 692(d)(2) also provides for a \$10,000 minimum benefit amount per victim. In order to qualify for relief under section 692, the person must be a "specified terrorist victim."

Section 692(d)(4) defines the term "specified terrorist victim," in pertinent part, as any "decendent who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995,"

The following general points may be useful in analyzing the issue of what constitutes a "wound or injury". The Supreme Court has noted "the maxim noscitur a sociis, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307 (1961). Applying this maxim, the term "injury" in the phrase "wound or injury," suggests a bodily injury where the skin is not broken, but does not suggest that mental injuries are included, such as a heart attack or stroke brought on by emotional shock. In construing tax statutes, the Supreme Court has also emphasized the default rule of statutory interpretation that exclusions from income must be narrowly construed. Commissioner v. Schleier, 515 U.S. 323, 328 (1995); United States v. Burke, 504 U.S. 229, 248 (1992) (Souter, J. concurring in judgment).

Based on the foregoing, we conclude that the term "injury" should not be read broadly. "Injury" does not include mental injuries or injuries caused by shock, such as heart attacks or strokes. If Congress intended section 692 to apply to mental anguish or shock that resulted in physical injury, the statute would have been more explicit. See The Hostage Relief Act of 1980, P.L. 96-449, 94 Stat. 1972, §§ 202(a) and 205(d), where Congress defined those individuals

entitled to relief as any individual "who dies as a result of injury or disease or physical or mental disability incurred or aggravated while such individual was in captive status."

In addition, section 692(d)(4) requires that the wounds or injury must be "incurred as a result of the terrorist attacks." We believe that this statutory phrase requires that the victim be within the zone of destruction or an area directly impacted by the terrorist attack.

The Alfred P. Murrah Federal Building was the target of the Oklahoma City Bombing. The Journal Record Building, the building housing the Water Resource Board and other adjacent buildings were heavily damaged or destroyed by the blast. The

[REDACTED]. These buildings, in our opinion, would be within the zone of destruction or the area directly impacted by the bomb. Victims in these buildings that died as a result of wounds or injuries caused by the bomb blast would qualify as a "specified terrorist victim" within the meaning of section 692(d)(4).

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions, please contact Attorney Bruce K. Meneely at extension 4831. We are closing our file on this case.

By: /S/ MICHAEL J. O'BRIEN
MICHAEL J. O'BRIEN
Associate Area Counsel (SB/SE)

cc: Area Counsel (SB/SE)
Miriam Howe, General Litigation Manager
SB/SE Division Counsel